

Panaji, 20th December, 2019 (Agrahayana 29, 1941)

SERIES II No. 38

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

Order

No. 8/86/2019-20/D.Aagri/1252

Read: Memorandum Nos.:

- 1) No. 8/86/2019-20/D.Aagri/972 dated 22-10-2019.
- 2) No. 8/86/2019-20/D.Aagri/970 dated 22-10-2019.
- 3) No. 8/86/2019-20/D.Aagri/968 dated 22-10-2019.
- 4) No. 8/86/2019-20/D.Aagri/971 dated 22-10-2019.

On the recommendation of the Goa Public Service Commission as conveyed vide their minutes/letter No. COM/I/5/2(1)/2019/208 dated 25-09-2019, the Governor of Goa is pleased to appoint and post the below mentioned candidates against the post of Assistant Agriculture Officers as probationer to the Group 'B' Gazetted under the Government of Goa, in the Level 6 of the Pay Matrix. The pay will be fixed in accordance with the Central Civil Service (Revised Pay) Rules, 2016 with immediate effect.

Sr. No.	Name of the Officer	Place of posting	Budget Head
1.	Shri Arjun Manohar Parab	Zonal Agriculture Office, Pernem	2401-00-105-02-01.
2.	Kum. Jovita Rosada Siqueira	Zonal Agriculture Office, Margao	2401-00-001-02-01.
3.	Shri Mayuresh Anant Bhat	Zonal Agriculture Office, Valpoi	2401-00-001-02-01.
4.	Shri Sachin Gokuldas Gaonkar (ST)	Zonal Agriculture Office, Canacona	2401-00-119-02-01.

The above candidates have been declared medically fit by the Medical Board of Goa Medical College and Hospital, Bambolim-Goa. The letter to verify their character and antecedent is sent to the concerned District Magistrate, the same will be communicated when received.

The above candidates shall be on probation for a period of two years with effect from the date of joining.

The pay and allowances of the above candidates shall be debited to the Budget Head mentioned against their names above.

The above candidates shall join the duties within a period of fifteen days from the date of receipt of this order.

The appointment is subject to order in the Writ Petition No. 613/2011 filed before the Hon. High Court of Bombay at Goa and that they shall not be entitled to claim any equity pursuant thereto. Their appointment shall be subject to the verification of the genuineness of educational qualification certificates and caste certificates (if applicable) which will have to be produced by them within 03 months from the date of joining the service.

By order and in the name of the Governor of Goa.

Madhav B. Kelkar, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 16th December, 2019.

Office of the Collector & District Magistrate
South Goa District

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Order

No. 37/31/2018/BBBP/Mag/X/13435

The District Collector/District Magistrate is pleased to constitute a Salcete, Mormugao, Quepem, Sanguem, Canacona, Ponda and Dharbandora Block Level Committees as under for monitoring and implementation of Beti Bachao Beti Padhao Scheme of the Ministry of Women and Child Development, Government of India in the State.

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|--|---------------------|
| 1. Dy. Collector & Sub-Divisional Magistrate | — Chairperson. |
| 2. Block Development Officer | — Member. |
| 3. Health Officer-PHC | — Member. |
| 4. Police Department represented by lady Police Officer not below the rank of S.I. of concerned Taluka | — Member. |
| 5. Assistant District Education Inspector | — Member. |
| 6. Field Assistant of Social Welfare Department | — Member. |
| 7. Arz (Anyay rahit zindagi) (NGO) | — Member. |
| 8. Gram Sevika/TA (DRDA) (South Blocks) | — Member. |
| 9. Jan Ugahi (NGO) | — Member. |
| 10. Child Development Project Officer | — Member Secretary. |

The Committee shall meet atleast once in 3 months and forward its report to the Director of Women & Child Development.

Ajit Roy, IAS, District Magistrate, South Goa.
Margao, 12th November, 2019.

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Department of Education, Art & Culture

Directorate of Art and Culture

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Order

No. DAC/5/Admn/PF/DPM/2018-19/5042

Whereas, the Department of Personnel, Secretariat, Porvorim vide letter No. 17/Comp. Apptt./2016/-PER/3165 dated 30-11-2018 had conveyed the approval of Government for appointing Smt. Deepashree P. Mhato on compassionate ground on Group 'C' post in this Directorate.

And whereas, Smt. Deepashree P. Mhato was appointed as Library Attendant in this Directorate vide order No. DAC/5/ADM/77/JCG/2016-17/7422 dated 31-12-2018. She has joined as Library Attendant in this Directorate w.e.f. 31-12-2018 (a.n.).

And whereas, Smt. Deepashree P. Mhato is on unauthorized absence since 04-02-2019.

And whereas, three Office Memorandums issued to said Smt. Mhato were returned unclaimed and Memorandum served through Mamlatdar of Bicholim and Notice served through Police Inspector Bicholim are also returned back mentioning that she is not residing at the given address and her present address is not known.

And whereas, Smt. Deepashree P. Mhato did not respond nor intimated her whereabouts to this office.

Now therefore, in pursuance to above, I, Shri Gurudas P. Pilarnekar, Director of Art and Culture, hereby terminate forthwith the services of Smt. Deepashree P. Mhato, Library Attendant, with immediate effect.

Gurudas P. Pilarnekar, Director (Art and Culture).

Panaji, 8th November, 2019.

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Department of Fisheries

Directorate of Fisheries

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Order

No. DF/ADMN/PROB.SUPDT./2018/4289

Read: Order No. DF/ADMN/PF/CPH/SOF/2016/2400 dated 17-08-2016.

On recommendation of the Departmental Promotion Committee as conveyed by the Goa Public Service Commission vide their letter No. COM/II/12/20(1)/2014/268 dated 02-12-2019, the Governor of Goa is pleased to lift the probation period in respect of Shri Chandresh Pramod Haldankar, and also confirm him in the post of Superintendent of Fisheries (Group "B" Gazetted) in Directorate of Fisheries in the pay scale of PB-2 Rs. 9,300-34,800+Grade Pay Rs. 4600/- with immediate effect.

By order and in the name of the Governor of Goa.

Vinesh Arlenkar, Director & ex officio Joint Secretary (Fisheries).

Panaji, 10th December, 2019.

Order

No. DF/ADMN/PROB.SUPDT./2018/4290

Read: Order No. DF/ADMN/PF/MSK/SF/2015/2399 dated 17-08-2016.

On recommendation of the Departmental Promotion Committee as conveyed by the Goa Public Service Commission vide their letter No. COM/II/12/20(1)/2014/268 dated 02-12-2019, the Governor of Goa is pleased to lift the probation period in respect of Smt. Megha Siddesh Kerkar, to the post of Superintendent of Fisheries (Group "B" Gazetted) in Directorate of Fisheries in the pay scale of PB-2 Rs. 9,300-34,800+Grade Pay Rs. 4,600/- with immediate effect.

By order and in the name of the Governor of Goa.

Vinesh Arlenkar, Director & ex officio Joint Secretary (Fisheries).

Panaji, 10th December, 2019.

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Department of Forest

Order

No. MS-REV.PF/DCF/WP/2018-19/383

Ref.: 1) Notification No. MS-REV.PF/DCF/WP/2018-19/989/296 dated 23-08-2019.
2) Addendum No. MS-REV.PF/DCF/WP/2018-19/316 dated 10-10-2019.

The Committee constituted under the Chairmanship of Joint Secretary (Revenue) vide order dated 23-08-2019 referred above shall finalize the report dated 21-06-2019 submitted by the Review Committee on the Private Forest areas identified by Sawant and Karapurkar Committees and submit the finalized report by 24-12-2019 for Government approval.

The issues with approval of Government.

By order and in the name of the Governor of Goa.

Shaila G. Bhosle, Under Secretary (Forests).

Porvorim, 13th December, 2019.

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Department of General Administration

Order

No. 13/4/2014-GAD-III/4010

On the recommendation of the Departmental Promotion Committee as conveyed by the Goa Public Service Commission vide their letter

No. COM/II/12/42(1)/2017/270 dated 02-12-2019, Government is pleased to declare that the following Section Officers (Group 'B' Gazetted) in Secretariat have satisfactorily completed their probation period of two years, with effect from the dates indicated against their names:-

Sr. No.	Name of the officers	Date of joining as Section Officer	Date of completion of probation period
1	2	3	4
1.	Smt. Karuna K. Kavlekar (SC)	02-06-2017	01-06-2019.
2.	Smt. Rita Fernandes e Mendonca	02-06-2017	01-06-2019.
3.	Shri Vinayak P. Gaude (S.T.)	05-06-2017	04-06-2019.
4.	Shri Anil D. Shirodkar (S.T.)	05-06-2017	04-06-2019.
5.	Shri Umesh N. Desai	02-06-2017	01-06-2019.
6.	Shri Suresh V. Parab	02-06-2017	01-06-2019.

By order and in the name of the Governor of Goa.

Shripad Arlekar, Under Secretary (GA-I).

Porvorim, 10th December, 2019.

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Department of Home

Home—General Division

Order

No. 9/28/2019-HD(G)/3276

In exercise of the powers conferred by sub-section (3) of Section 3 of the National Security Act, 1980 (Central Act 65 of 1980) (hereinafter referred to as the "said Act"), the Government of Goa, having regard to the circumstances prevailing in South Goa District of the State of Goa is satisfied that it is necessary so to do, hereby directs that during a period of three months from the date of commencement of this Order, the District Magistrate of South Goa may also exercise the powers conferred by sub-section (2) of said Section 3 within the local limits of their jurisdiction, if he is satisfied as provided in said sub-section (2).

This order shall come into force on the date of its publication in the Official Gazette.

By order and in the name of the Governor of Goa.

Nilesh K. Dhaigodkar, Under Secretary (Home).

Porvorim, 13th December, 2019.

Department of Labour

Order

No. 24/20/2019-LAB/805

The Government of Goa, hereby authorizes the Office of the Commissioner, Labour and Employment, to implement the provisions of Rule 5(2) of the Hazardous and Other Waste (Management and Transboundary) Movement Rules, 2016 in the State of Goa, in respect of the following:-

- (a) Ensure recognition and registration of workers involved in recycling, pre-processing and other utilization activities.
- (b) Assist formation of groups of such workers to facilitate setting up such facilities.
- (c) Undertake industrial skill development activities for the workers involved in recycling, pre-processing and other utilization.
- (d) Undertake annual monitoring and to ensure safety and health of workers involved in recycling, pre-processing and other utilization.

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 06th December, 2019.

Order

No. 24/11/2011-LAB-ESI/808

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/28(1)/2019/244 dated 06-11-2019, Government is pleased to promote Smt. Manali Borkar, Steward to the post of Dietician (Group "B" Non-Gazetted), in E.S.I. Hospital, Margao in E.S.I. Scheme, under office of Commissioner, Labour & Employment on regular basis in the Level 6 of Pay Matrix (PB.-2 Rs. 9,300-34,800+Grade Pay Rs. 4,200/-) and other allowances to be fixed as per rules with immediate effect.

The above official shall be on probation for a period of 02 years with effect from the date of joining.

The promotion is made against the vacancy occurred due to creation of the post vide Order No. 24/10/2017/LAB-ESI/703 dated 19-10-2018.

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 06th December, 2019.

Order

No. 28/32/2019-LAB/814

Whereas, the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Indoco Remedies Limited, L-14, Verna Industrial Estate, Verna, Goa and it's workman, Shri Diago Lucas, Operator, represented by Gomantak Mazdoor Sangh, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas, the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said Act"), the Government of Goa hereby refers the said dispute for adjudication to the Labour Court-II of Goa at Panaji-Goa, constituted under Section 7(1) of the said Act.

SCHEDULE

- "(1) Whether the action of the management of M/s. Indoco Remedies Limited, L-14, Verna Industrial Estate, Verna, Goa, in refusing employment to Shri Diago Lucas, Operator, with effect from 16-07-2018, is legal and justified?
- (2) If not, to what relief the workman is entitled?"

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 10th December, 2019.

Notification

No. 28/2/2019-LAB/Part-VI/817

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 20-11-2019 in reference No. IT/62/90 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 10th December, 2019.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding
Officer)

Ref. No. IT/62/90

Workmen,
Rep. by the President,
Goa Trade & Commercial
Workers' Union,
Velho's Building,
Panaji, Goa-403 001. ... Workmen/Party I
V/s

1. M/s. Macsil Structural ... Employer/Party II(1)
Fabricators,
Nuvem, Salcete, Goa.
2. M/s. Anderson Marine ... Employer/Party II(2)
Pvt. Ltd.,
Vasco-da-Gama, Goa.
3. M/s. Economic Develop-... Employer/Party II(3)
ment Corpn. Ltd.,
Panaji, Goa.

Workmen/Party I absent.

Employer/Party II(1) represented by Ld. Adv. Shri P.
Agrawal.

Employer/Party II(2) absent.

Employer/Party II(3) represented by Ld. Adv. Shri S.
Bharne.

AWARD

(Delivered on this the 20th day of the month
of November of the year 2019)

By Order dated 14-12-1990, bearing No. 28/67/
/90-LAB, the Government of Goa in exercise of
powers conferred by Section 10 (1)(d) of the
Industrial Disputes Act, 1947 (for short The Act),
has referred the following dispute to this Tribunal
for adjudication.

*"Whether the action of the managements of
M/s. Macsil Structural Fabricators, Contractor
and M/s. Anderson Marine Pvt. Ltd., Principal
Employer in refusing employment to the
following workmen with effect from 26-9-1989
is legal and justified.*

- (1) Shri Camilo.
- (2) Shri R. Naik
- (3) Shri Inacio Fernandes.
- (4) Shri John D'Souza.
- (5) Shri Kennedy.
- (6) Shri Mahesh Naik.
- (7) Shri Santan Rebello.
- (8) Shri Alfred Fernandes.

- (9) Shri Casmiro Vaz.
- (10) Shri Shyam Naik.
- (11) Shri Hirrapa Chavani.
- (12) Shri Chandrakant Khedekar.
- (13) Shri Cruz D'Souza.
- (14) Shri Rocky Colaco.
- (15) Shri Robert Goes.
- (16) Shri Sangappa Chavandi.
- (17) Shri Joaquim Araujo.
- (18) Shri Arjun Palyekar.
- (19) Shri Santan Barreto.
- (20) Shri Agnel D'Cruz.
- (21) Shri Adbul S. Margl.
- (22) Shri S. K. Naik.
- (23) Shri Bhima Varkankar.
- (24) Shri Rajaram Tari.
- (25) Shri Laximan Khoth.
- (26) Shri Sandeep Naik.
- (27) Shri Menino Almedia.
- (28) Shri Chakravorthy.
- (29) Shri Mahadev B. Naik,
- (30) Shri Mariano.

If not, to what relief the workmen are entitled?"

2. Upon receipt of the reference, it was registered
as IT/62/90 and registered A/D notices were issued
to both the parties. Pursuant to service of notices,
Party I filed a Claim statement at Exhibit 7 and
Party II(1) filed a written statement at Exh. 13 and
Party II(2) filed the written statement at Exh. 12
and Party II(3) filed Written statement at Exh. 41.

3. In short, the case of Party I is that the
Party II(1) is a contractor for the Party II(2) who is
specialized in ship building and barge repair works
since 1985. The Party II(1) did not obtain licence
under the Contract Labour (Regulation and
Abolition) Act, 1970 and said fact has been
admitted before the Labour Commissioner. The
Party II(1) employed about 70 workers who were
designated as welders, fitters, etc. on daily wages.
The said workmen had put in 5 years of service but
were paid low wages, besides that they were not
given any extra benefit. The workmen therefore
resolved to form an union and on 15-9-1989 they
became the members of Party I union and informed
the said fact to Party II(1) and Party II(2). The
Party II(1) thereafter refused employment to all the
30 workmen but retained another 30 workmen who
did not join the union. The Party II(1) did not issue
letters nor did they pay any retrenchment
compensation, notice pay to the said workmen,
while refusing them employment. The management
of Party II(1) resorted to victimization of the
workmen pursuant to the formation of the union
by illegal termination of services of the workmen
without following provisions of Industrial Disputes
Act.

4. The Party I raised an industrial dispute for refusal of employment by Party II(1). The Party II(1) started engaging new recruits and also regularized the services of junior workmen. The Conciliation Officer held various discussions. The Party II(1) employed workmen without maintaining any registers. The Party II(1) was not having contract licence and therefore it was responsibility of Party II(2) to settle the dispute pertaining to refusal of employment of 30 workmen who is the principal employer and responsible for illegal termination of services of the workmen. The Party II have not at all followed the principle of 'first come, last go' besides they have not complied with the Labour laws prior to termination of the workmen. The Party I workmen have not been paid retrenchment compensation and/or other dues during the time of termination nor issued any notice of termination to the workmen. The action of the management is patently illegal. The Party I workmen are entitled for the reliefs claimed.

5. In the Written statement, Party II(1) claimed that the Hon'ble Tribunal has no jurisdiction to try the present reference nor the Goa Trade and Commercial Workers' Union is entitled to represent the Party I workmen. The Party II(1) are engaged in barge repairs for various companies, however Party I workmen are not their employees at that relevant time, however they have engaged the services of Party I workmen and other workmen pursuant to the contract entered into with Party II(3) for building three vessels and as per the terms of contract, the vessels were to be delivered within six months and accordingly the contract commenced from 1-1-1989 and ended by efflux of time on 25-9-1989 and thereafter the Party I workmen were informed that there would be no gainful employment which could be provided for them and majority of the workmen accepted their dues in full and final settlement including those who are party to the reference. The Party II(1) were unable to secure any further contract and as such they were compelled to close the operation of building and repairs of barges. There is no subsisting contract between the Party I and Party II(1). There was no refusal of employment. The Party I are not entitled for any relief.

6. In the written statement, the Party II(2) claimed that the Party I is not entitled to represent the workmen in the reference. The Party II(2) are not doing the work of building barges and ships and have never resorted to victimization of any workmen, more so the workmen of Party II(1). The reference therefore be answered in the negative.

7. It is a matter of record that by order dated 15-3-2018 the Party II(3) was impleaded as party to the above reference and accordingly it filed a written statement at Exh. 41 inter-alia claiming that there is no employer-employee relationship between the Party I workmen and Party II(3). The claim of Party I is hopelessly barred by limitation as against the Party II(3). The Party II(2) had committed default in payment of the loan facilities granted by Party II(3) and therefore was constrained to initiate action under Section 29 of State Financial Corporation Act (SFCA) for recovery of dues and in pursuance of said action, possession of mortgaged assets of Party II(2) was taken over by Party II(3) and thereafter by invitation of tenders/ /auctions has transferred the mortgaged property of Party II(2) to M/s Gultare Energy Projects Pvt. Ltd. by a Deed of Assignment and Sale dated 10-7-2006. The Party II(3) is not concerned with the dispute referred by the appropriate Government and therefore it cannot be held liable to Party I in any manner whatsoever and therefore, the claim by Party I be dismissed as against the Party II(3).

8. In the rejoinder at Exh. 14, the Party I denied the case put forth by Party II(1) in Written statement.

9. Based on the averments of the respective parties, the following issues were framed at Exh. 15.

- (1) Does Party II prove that this Tribunal has no jurisdiction to decide the reference in view of the provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970?
- (2) If not, does Party I prove that the action of the Management of M/s Macsil Structural Fabrication Contractor of M/s Anderson Marine Pvt. Ltd., Principal Employer in refusing employment to 30 workers named in the reference is legal and justified?
- (3) Does Party II proves that some of the workers named in the reference left their services after obtaining their legal dues pursuant to the closure?
- (4) Whether the Party I is entitled to any relief?
- (5) What Award or Order?

10. In support of his claim, Party I examined Shri Abdul Sayyed who produced on record a copy of letter dated 22-9-1989 issued by the Union to Party II about formation of union at Exh. W-1, a copy of letter dated 26-9-1989 issued by the union

to the Party II regarding refusal of employment at Exh.W-2. The Party I also examined Shri Agnel D'Cruz who produced on record a copy of minutes of discussions held on 16-10-1989 and 8-1-1990 before the Conciliation Officer at Exh. W-3 and Exh. W-4. On the other hand, the Party II(1) examined Shri Cancio Mascarenhas as witness. The Party II(3) also examined Ms. Sandra Mascarenhas who produced on record a copy of Notification under No. 1/4959/90-ILD-MISC in Official Gazette at Exh. 48, copies of Panchanama at Exh. 49 colly, a copy of deed of assignment and sale at Exh. 50 and a copy of board resolution at Exh. 51.

11. Heard arguments.

12. My answers to the above issues are as follows:

Issue No. 1	...	In the Affirmative.
Issue No. 2	...	In the Negative.
Issue No. 3	...	In the Affirmative.
Issue No. 4	...	In the Negative.
Issue No. 5	...	As per final order.

REASONS

Issue No. 1:

13. It is the case of Party I that they were employed by Party II(1) who was working as a contractor with the establishment of M/s. Anderson Marine Pvt. Ltd. since 1985 as welders, fitters, etc. for ship building and barge repair works of Party II(2), however the Party II(1) did not obtain licence under the Contract Labour (Regulation and Abolition) Act, 1970 and were paid very low wages and when they formed the union, the Party II(1) refused employment to all 30 workmen without paying any retrenchment compensation and since Party II(1) was not having any contract licence, it is the responsibility of Party II(2) to settle the dispute pertaining to employment. The Party I have examined two witnesses in support of their case. The witness, Shri Abdul Sayyed has claimed that he was working with M/s. Anderson Marine Pvt. Ltd. since 1988 as a welder who was carrying on the work of construction of ships and that the workers formed the union after which it kept all the 30 workmen mentioned in the reference out of employment. The other witness, Shri Agnel D'Cruz also claimed that he was working for Party II(2) as welder. He stated that when the workers of Anderson Marine Pvt. Ltd. formed an union and informed the management, it gave break to all the 30 workmen. It is never their case that they were working for the contractor, Party II(1) and that it had not obtained any licence under the Contract Labour (Regulation and Abolition) Act, 1970. They have therefore not supported the Party I as per the claim statement.

14. Be that as it may, no documents were produced on record that they were working either for Party II(1) or Party II(2). The claim statement states that the Party II(1) being the contractor has not obtained any licence and therefore the Party II(2) is also liable for the compensation. Needless to mention, the dispute has been referred by the appropriate Government under Clause (d) of sub-section (1) of Section 10 of Industrial Disputes Act, while the claim raised by the workmen is under Contract Labour (Regulation and Abolition) Act, 1970. The Hon'ble High Court of Rajasthan (Jaipur Bench) in the case of **Delhi Cloth and General Mills Co. Ltd. vs. State of Rajasthan and Ors.**, MANU/RH/0059/1991 has clearly held that the said Act is a special enactment which has been legislated to apply only to subject of contract labour and the appropriate Government has no power to refer the dispute to adjudication concerning the subject of contract labour under provisions of Section 10 of the Act as held in the case. The Apex Court in the case of **Vegoils Private Limited vs. The Workmen**, MANU/SC/0530/1971, has also observed that the Industrial Tribunal will have no jurisdiction to try the matter concerning Contract Labour (Regulation and Abolition) Act, 1970 to pass an award and therefore the Tribunal has no jurisdiction to try such cases and hence the reference is not maintainable. It is therefore in such circumstances, as rightly submitted by Ld. Advocate Shri Agrawal for Party II(1) the reference made by appropriate Government is not maintainable under Section 10 of Industrial Disputes Act as the Tribunal has no jurisdiction to decide the reference in view of provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970. Hence, the above issue No. 1 is answered in the affirmative.

Issue No. 2:

15. Once it is held that the Tribunal has no jurisdiction to decide the reference, the alleged action of the management of Party I, M/s Macsil Structural Fabrication, who is the contractor of Party II(2), M/s Anderson Marine Pvt. Ltd. in refusing employment to the workers mentioned in the reference cannot be questioned in the present reference. Be that as it may, Ld. Adv. Shri Bharne for the Party II(3) has pointed out that the Party II(1) entered into the contract with Party II(2) for the period from 1-1-1989 to 25-9-1989 and said period expired prior to the date of alleged action mentioned in the reference. A little peep into the

order of reference clearly shows that it is alleged by the workmen that the action of the management of Party II(1) and Party II(2) in refusing employment to the workers w.e.f. 26-9-1989 is illegal and unjustified. The Party II(2) has claimed in the written statement that as per the terms of contract, the vessels were to be delivered within six months and the contract commenced from 1-1-1989 and ended by efflux of time on 25-9-1989, which clearly shows that the contract expired prior to alleged date of dispute mentioned in the reference. There is no evidence that either Party II(1) or Party II(2) have refused employment to the workers w.e.f. 26-9-1989, when the above contract expired on 25-9-1989. No other contracts have been produced on record or referred either in the claim statement or written statement. It is therefore the Party I has failed to prove issue No. 2 in its favour. Hence, it is answered in the negative.

Issue No. 3:

16. The witness, Shri Agnel D'Cruz, Secretary of the Union examined by Party I has clearly admitted at page 4 of the cross examination that the workers at Sr. Nos. 8, 10, 15, 16, 22, 27, 28, 29 and 30 have settled the dispute. It is therefore, the issue No. 3 is answered in the affirmative.

Issue Nos. 4 and 5:

17. The Party I have failed to prove the issues cast on it that they were employed by Party II(1) and Party II(2) and that they have been refused the employment w.e.f. 26-9-1989. The Party I have also failed to show that the Tribunal has jurisdiction to decide the reference in view of the provisions contained in Contract Labour (Regulation and Abolition) Act, 1970. It is therefore, the Party I workmen are not entitled for any reliefs.

18. In the result, I pass the following:

ORDER

- (i) The Reference is answered against the Workmen/Party I.
- (ii) No order as to costs.
- (iii) Inform the Government accordingly.

Sd/-
(Vincent D'Silva)
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/2/2019-LAB/Part-VI/816

The following Award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 19-11-2019 in reference No. IT/6/19 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 10th December, 2019.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT

GOVERNMENT OF GOA AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding
Officer)

Ref. No. IT/6/19

Workmen,
Shri Santosh Kanta Assoldekar
& 31 Ors,
H. No. 45, Pimpoll Cotto,
Quepem, Goa-403 705. ... Workmen/Party I
V/s
M/s. National Auto Accessories Ltd.,
(In Liquidation), NAAL,
C/o. IFCL Ltd., 8th Floor,
Earnest House, Nariman Point,
Mumbai-400 021. ... Employer/Party II
Workmen/Party I represented by Ld. Adv. Shri V. A.
Palekar.

Employer/Party II represented by Ld. Adv. Ms.
Amira A. Razaq.

AWARD

(Delivered on this the 19th day of the month
of November of the year 2019)

By Order dated 12-6-2019, bearing No. 28/10/2019-LAB/379, the Government of Goa in exercise of powers conferred by Section 10 (1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the settlement dated 09-04-2001 signed between the management of Ms. National Auto Accessories Limited and Goa Trade and Commercial Workers Union on account of deemed closure of M/s. National Auto Accessories Limited with effect from 09-02-2001, is legal and justified?

(2) *If not, then, to what relief the workmen are entitled?"*

2. Upon receipt of the reference, it was registered as IT/06/19 and registered A.D notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim statement at Exhibit 8 and Party II filed a Written statement at Exhibit 11.

3. In short, the case of the Party I is that they are the workmen employed with Party II engaged for performing the work in various designations. The Party II had on its roll 126 workmen as on 1-7-1997. That some of the employees of Party II resorted to a strike since 9-7-1997 and the company declared a lock-out illegally. The Party II had infact started adopting various strategies to deprive employment to the Party I since 1994 with an ultimate objective of closing the factory. The Party II thereafter created an artificial deficit of funds and business loss paving way for reference to BIFR. The Party II in its attempt to deprive Party I the rights and benefits played a legal fraud in as much as they conspired and connived with the Union and executed a settlement dated 9-4-2001 compromising on the interest of Party I workmen. The whole settlement was based on a false premise and with misrepresentation with regard to material facts as a result of which the financial benefit to which Party I were entitled to were reduced to 10% of their actual entitlement.

4. It was mandatory on the part of Party II to seek permission from appropriate authority before proceeding to declare a closure as contemplated under Section 25-O of the Industrial Disputes Act. The said settlement is contrary and dehors the provisions of Industrial Disputes Act. The Party II deliberately chose not to apply for permission for closure from the appropriate authority in order to wriggle out from consequences that will follow in accordance with law, which is that there is no closure in the eyes of law and the Party I workmen are entitled for full back wages and other consequential benefits. The foundation for signing the alleged settlement could have been only upon a valid closure and the closure itself being illegal and contrary to the provisions of the Industrial Disputes Act, all the incidental proceedings that germinated from such an illegal closure will have to be declared as nullity. It is also claimed that those who were entrusted with the duty and obligation to protect the interest of Party I engaged themselves in compromising the interest of Party I workmen. The Party I workmen would have been entitled too much higher financial gain, if not for the alleged illegal settlement.

5. The copy of the said settlement was not made known to the Party I although it was executed on 9-4-2001 and nobody ever discussed with them with regard to the proposal of settlement and no meeting was convened prior to signing of the settlement. It was represented to some of the workmen that the settlement arrived is the best settlement and that if they do not accept the same, they will not get anything. The Party II company came to be wound up vide order dated 28-9-2001 passed in Company Petition and pursuant to the said order of winding up, the Official Liquidator vide advertisement published in newspaper around 19-10-2004 invited claims from the creditors and as such the workmen viz. Santosh Assoldekar and Manuel Travasso along with few others submitted their claim, however the Official Liquidator declined to entertain their claim on the basis of settlement dated 9-4-2001. There were several rounds of litigations between the said workmen and the Official Liquidator which finally concluded by order dated 3-5-2019 passed by the Hon'ble High Court and the order of reference is the outcome of said order.

6. The workman, Shri Santosh Assoldekar filed an application dated 22-1-2016 before the appropriate authority raising the dispute, however it vide letter dated 11-4-2016 informed Shri Santosh that since the issue is not raised by the trade union or the five employees in the establishment, same is not an industrial dispute. Shri Manuel Travasso had also addressed an identical letter. It is therefore 32 workmen raised the dispute before the appropriate authority in respect of said matter vide letter dated 4-8-2016, however the appropriate authority vide letter dated 17-5-2017 dismissed the representation made by them along with other workers stating that there is no scope for industrial dispute after which the Party I approached the Hon'ble High Court. The Party I therefore prayed that the settlement dated 9-4-2001 signed by Party I with the Union be declared as null and void, quashed and set aside and direct the Party II to pay full back wages from the date the last wages were paid till date or till the date a closure is declared in accordance with law, whichever is later along with bonus and other statutory dues and other reliefs.

7. The Party II filed a Written statement inter-alia contending that the company was having its factory at St. Jose de Areal and was engaged in the manufacture of auto accessories from August, 1988 and as the company was incurring financial losses due to various factors, it was referred to the Board of Industrial and Financial Reconstructions

(BIFR) under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and the company is continuing its operation under BIFR since the year 1995 which continued till July, 1997 and as the rehabilitation package approved by BIFR failed, it formed its opinion in September, 2000 for winding up of the company, which was forwarded to the Hon'ble Company Court, subsequent to which an order dated 28-9-2001 was passed ordering the company to be wound up and IFCI Limited was appointed as its Official Liquidator and accordingly the liquidator took the possession of the assets of the company and initiated the process for its sale as per the direction of the Hon'ble Company Court and consequently, the assets were sold by the liquidator and distribution of dividend was also carried out to the secured creditors.

8. A Memorandum of Settlement dated 9-4-2001 was entered into between the company and the workers' union under Section 12(3) read with Section 18(3) of the Act before the Conciliation Officer. The said Memorandum of Settlement was entered into prior to winding up order passed in Company Petition wherein workmen were duly represented by their registered trade union in conciliation proceedings. A Memorandum of Settlement inter-alia recorded that an amicable settlement of the dispute between the workmen and the management was arrived at and the factory was deemed closed. There was no factual closure of the company and therefore the question of non-compliance of provisions of Section 25-N and 25-O will not arise and the workmen would be bound by the settlement and not entitled for any additional claims. Only 12 workers including Shri Santosh Assoldekar and Shri Manuel Travasso filed the claim against the company subsequent to Memorandum of settlement which was adjudicated by the Liquidator. The Party I workmen are not entitled to challenge the said settlement as they are bound by it. The Party I union approached the Tribunal after a lapse of 16 years from the date of settlement and the order of winding up which is not tenable and therefore the reference be dismissed.

9. No rejoinder filed.

10. Issues that came to be framed at Exhibit 17 are as follows:

- (1) Whether the Party I proves that the Settlement dated 09-04-2001 signed between the management of M/s. National Auto Accessories Limited and Goa Trade and Commercial Workers Union on account of deemed closure of M/s.

National Auto Accessories Limited with effect from 09-02-2001 is illegal and unjustified?

- (2) Whether the Party II proves that there was a deemed closure and not factual closure of the company?
- (3) Whether Party II proves that the Party I approached the Tribunal after a lapse of 16 years from the date of settlement and order of winding up, hence the claim is not tenable in law?
- (4) What Relief? What Order?

11. In support of the claim, Party I examined Shri Santosh Assoldekar and produced on record a copy of order of reference vide order No. 28-10-2019-LAB//376 dated 12-06-2019 at Exh 24, a copy of settlement dated 09-04-2001 at Exh. 25, a copy of Minutes of conciliation proceedings dated 08-03-2019 at Exh. 26, a copy of letter from Party-II dated 20-05-1994 at Exh. 27, a copy of letter from Party-II dated 14-04-1999 to Mr. Manuel at Exh. 28, copies of Allowance at Exh. 29 colly, a copy of Calculation showing the bonus at Exh. 30, a copy of payment due from May, 1999 upto December, 2004 at Exh. 31, a copy of payment due from April, 1999 to September, 2001 at Exh. 32, a copy of Bonus after revocation period from April, 1999 to March, 2001 at Exh. 33, a copy of paid leave for the year 1999 to 2001 at Exh. 34, a copy of letter from Party-II dated 14-04-1999 to Mr. Santosh at Exh. 35, a copy of letter from Party-II dated 09-07-1997 to Mr. Santosh at Exh. 36, a copy of letter from Official Liquidator dated 06-02-2006 at Exh. 37, a copy of notice of rejection of proof dated 20-04-2011 from Official Liquidator at Exh. 38, a copy of letter from Mr. Manuel dated 10-04-2007 to Official Liquidator at Exh. 39, a copy of order dated 23-01-2009 of Hon'ble High Court at Exh. 40, a copy of letter from Labour Commissioner dated 11-04-2016 to Mr. Manuel at Exh. 41, a copy of letter dated 04-08-2016 of Party-I raising industrial dispute at Exh. 42. The Party I also examined Shri Victor M. C. Fernandes and Shri Premanand Kotharkar as witnesses. On the other hand, Party II examined Shri Vijay Singh Yadav and produced on record a printout of e-mail dated 25-9-2019 along with the letter of authorization dated 24-9-2019 issued by IFCI Ltd. at Exh. 61 colly and a copy of letter No. IRM/CON/SG/(22)/2018 dated 16-8-2019 issued by the DLC along with certified copy of Roznama, MOU dated 9-2-2001 and MOS dated 9-4-2001 being the records of the proceedings of the conciliation held between the management of the company and the workmen represented by the registered union prior to its liquidation.

12. Heard arguments. Notes of Written arguments came to be placed on record by Party I as well as Party II.

13. I have gone through the records of the case and have duly considered the arguments advanced. My answers to the above issues are as follows:

- Issue No. 1 ... In the Negative.
- Issue No. 2 ... In the Affirmative.
- Issue No. 3 ... In the Negative.
- Issue No. 4 ... As per final order.

REASONS

Issue No. 1:

14. Learned Advocate Shri V. A. Palekar for the Party I has submitted that the Party II had on its roll 126 workmen on the day of the closure of the company and the legal consequences of the said closure is that the company is barred from taking any action of that of retrenchment or closure unless it has complied with the provisions of Section 25-N and 25-O under Chapter VB of the Industrial Disputes Act, which is mandatory in nature, failure of which would render every action a nullity from inception. He further submitted that the Party II did not apply for any permission to take an action of that of retrenchment, lock-out or closure at any point of time and therefore the termination of the services of the Party I is illegal and void ab initio. The Union deliberately and maliciously arrived at a settlement that has the effect of compromising the interest of the Party I workmen. The settlement as regards to retrenchment/closure can be arrived at provided such a retrenchment/closure has been effected in accordance with law. There is an underlying assumption that the settlement reached with the help of conciliation officer must be fair and reasonable and when there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of fact or even corruption and other inducement, the Tribunal can ignore such a settlement. He further submitted that no permission was applied under Section 25-O; no notice of meeting was issued; no minutes of alleged meeting are on record; no material to show that the Conciliation Officer, Party II or the union communicated the M.O.U./Settlement to the Party I union and therefore the settlement is bad in law and in support thereof, he relied upon the case of **(1) Uttaranchal Forest Development Corporation and Anr. vs. Jabar Singh and Ors, (2007) 2 SCC 112** and **(2) Mohammad Hifzur Rehman & Ors. vs. Maharashtra State Handloom Corporation, through its Managing Director & Ors., 2014 (O) Supreme (Mah) 483.**

15. Per contra, Ld. Adv. Ms. Amira Razaq for the Party II has submitted that the parties have agreed in the general body meeting of the workers held on 25-2-2001 to settle the dispute amicably as per the Memorandum of understanding and thereafter again met in the office on 9-4-2001 and a settlement was arrived at and on account of closure of the factory, the workmen were deemed to have been properly relieved from the services of the company. She further submitted that the settlement dated 9-4-2001 was signed between the window of time between the recommendation made by BIFR in September, 2000 for winding up and the actual winding up order passed by the Company Court on 28-9-2001. The said settlement was arrived between the recognized trade union and the management and it was agreed that the company is deemed have to be closed and the workers deemed to have been properly relieved from the services of the company on the closure of last working day of 9-7-1997 and that the management will pay the dues to the workmen in full and final settlement of all their claims, legal or otherwise as per the annexure 'A' of the settlement and that they have no other claim of whatsoever from the company. She further submitted that the Memorandum of settlement was entered in conciliation proceedings under Section 12 r/w Sec. 18(3) of the Act and as such, the settlement is binding on all the parties.

16. In fine, the subtraction of the controversy which led to the reference is whether Settlement dated 9-4-2001 signed by the Union and the management is legal and justified and whether it was a deemed closure or factual closure and if it was a factual closure, whether the Party II has complied the provisions of Sections 25-N and 25-O of Chapter VB of the Industrial Disputes Act.

17. The uncontroverted facts leading to the reference is that the company viz. National Auto Accessories Limited was engaged in the manufacture of auto accessories from August, 1988 and as the company was incurring financial losses due to various factors, it was referred to the Board of Industrial and Financial Reconstructions (BIFR) under the provisions of Sick Industrial Companies (Special Provision) Act, 1985 (SICA) and the company was continuing its operation under BIFR since the year 1995 which continued till July, 1997 and as the rehabilitation package approved by BIFR failed, it formed its opinion in September, 2000 for winding up of the company, which was forwarded to the Hon'ble Company Court, subsequent to which an order dated 28-9-2001 was passed ordering the company to be wound up and IFCI Limited was appointed as its Official Liquidator

and accordingly, the Liquidator took the possession of the assets of the company and initiated the process for its sale as per the direction of the Hon'ble Company Court and consequently, the assets were sold by the Liquidator and distribution of dividend was also carried out to the secured creditors. There is no dispute that the Settlement dated 9-4-2001 was signed between the recommendation made by BIFR for winding up and the actual winding up order passed by the Company Court on September, 2001. The said settlement was arrived between the recognised trade union viz. Goa Trade and Commercial Workers Union (AITUC) represented by its committee members, the local committee, the employer represented by the General Manager and the Officer wherein the genesis leading to the settlement has been specifically pleaded.

18. It was also clearly mentioned in the settlement that as the rehabilitation package approved by BIFR and the revival of the company became almost impossible and beyond the reach of control of the management, the union and the workmen expressed their inability to come forward with any proposal for the revival of the operations of the company and as such declared lock-out on 14-4-1998 and in the meantime, the management and the union discussed on the closure of the factory and during bilateral discussions, the matter could not be settled amicably and as such the parties sought intervention of the Conciliation Officer and the matter was discussed on various occasions and admitted in conciliation and a Memorandum of understanding was reached. It was also mentioned that the union/workmen conveyed to the management that the general body meeting of the workers was held on 25-2-2001 and it has been unanimously agreed to settle the dispute amicably as per the Memorandum of understanding and that the parties thereafter again met on 9-4-2001 and a settlement was arrived at on the terms agreed in the Memorandum of understanding. The clauses of the settlement clearly indicate that the parties agreed that the factory of the company is deemed to have been closed and that on account of closure of the factory, the workmen were deemed to have been properly relieved from the service of the company on the closure of the last working day on the 9-7-1997 and that the management agreed that they will pay the dues in full and final settlement of all their claims, legal or otherwise as per annexure 'A' of the Memorandum of settlement.

19. There is no dispute that all the parties to the Memorandum of settlement have signed the memorandum before the conciliation officer. There

cannot be any dispute that as per the said settlement, the company employed 126 workmen in the factory and all the workmen were the members of the said union. The Party I workmen were also the members of the said union who have signed the said settlement. Annexure 'A' of the settlement shows that all the dues of the said 126 workers are covered in the said settlement and said dues were settled as per the settlement, except few employees who have approached the Official Liquidator and the said claims were adjudicated by it. All the workers including Party I workers were legally represented by the recognised union in conciliation process which culminated in the Settlement dated 9-4-2001 before the Conciliation Officer under Section 12(3) and Section 18(3) of the Industrial Disputes Act. The settlement therefore has become finality and is legally binding on all the workmen. The settlement was not challenged by any of the recognised union or any workmen before the appropriate authority as prescribed under the law. The records clearly indicate that the settlement was arrived at as a measure to protect the rights of the workmen and to ensure them a guaranteed financial package which would have been difficult after winding up considering the financial status of the company in liquidation.

20. Importantly, the Memorandum of settlement was signed on 9-4-2001. It has not been challenged till 2001 when for the first time said Shri Santosh Assoldekar and Manuel Travasso in the Company Petition have raised the issue. None of the other 124 workmen out of 126 workmen referred in the settlement have challenged the settlement at any point of time. Shri Santosh has however stated that he is not aware if any of the 32 workmen including himself listed in the affidavit in evidence took any steps to object the Memorandum of settlement after it was signed on 9-4-2001 prior to liquidation of the company. The witness, Victor M. C. Fernandes has also clearly stated that the settlement is illegal because Santosh Assoldekar met him and told him so and that he signed the representation dated 4-8-2016 to the Labour Commissioner because Santosh informed him that the settlement was not fair. Similarly, Premanand Kotharkar has also stated that Assoldekar told him that the settlement is illegal. It is also a matter of record that one workmen viz. Venkatesh Patil had filed a Company Application and similar contention was raised. However, the Hon'ble High Court vide order dated 23-2-2007 has observed that the settlement arrived at between the parties under Section 18(3) of the Act is binding on all the workmen to the settlement

and is in full force and effect till it is not challenged by said Venkatesh having been the member of the said union.

21. It is also well settled in the case of **I.T.C. Ltd. Workers' Welfare Association vs. Management of I.T.C. Ltd.**, (2002) 3 SCC 411 that the settlement arrived in the course of conciliation proceedings carries a presumption that it is just and fair. It becomes binding on all the parties to the dispute as well as to the other workmen in the establishment to which the dispute relates and all other persons who may be subsequently employed in that establishment. An individual employee cannot seek to wriggle out of it merely because it does not suit him. It is also held that a settlement is a product of collective bargaining and is entitled to due weightage and consideration, more so when a settlement is arrived at in the course of conciliation proceeding. The settlement can only be ignored in exceptional circumstances viz. if it is demonstrably unjust, unfair or the result of malafides such as corrupt motives on the part of those who were instrumental in effecting the settlement. The settlement has to be judged as a whole, taking an overall view and cannot be examined in piecemeal and in vacuum. It is not open to them to ignore the settlement or even belittle its effect by applying its mind independent of the settlement, unless it is found to be contrary to the mandatory provisions of the Act.

22. In short, it is evident from the records that the settlement was entered into in the year 2001 when the company was under deep stress and after the BIFR recommended for winding up of the company in the year 2000. The said settlement was entered into under Section 12(3) read with 18(3) of the Industrial Disputes Act before the appropriate authority with the participation, consent and acceptance of the registered Trade union of the company. There was no allegation at any point of time by any of the employees that the settlement was unjust, unfair or the result of malafides or fraud on the part of those who were instrumental in effecting the settlement till the time the aforesaid two employees raised the dispute before the Official Liquidator for payment of wages in the year 2011. The Memorandum of settlement is therefore final and binding on all the workmen. The Party I workmen have not alleged any fraud, misrepresentation or corrupt motives in any of the Petition including the Claim statement, affidavit-in-evidence, except in the written arguments filed by the Party I including allegation against the Conciliation Officer, however neither the union nor its representative were summoned as witnesses. There is also no evidence led by Party I to

substantiate its allegation that the conciliation officer acted malafide. The said settlement was arrived at to ensure a guaranteed amount to the workmen before the winding up of the company. There is also no evidence adduced by the Party I that the management of the company had declared a closure of the factory; such closure was declared after the recommendation of the BIFR in September, 2000 and before the settlement dated 9-4-2001; that such closure was factual and not merely a fictional state of affairs intended to arrive at an amicable settlement as is found recorded in the Memorandum of understanding dated 9-2-2001 and in the Settlement dated 9-4-2001.

23. Needless to mention, that the Party I workmen were part of registered union which entered into the Memorandum of settlement in conciliation proceedings and therefore stands on a higher pedestal than a settlement executed other than in conciliation proceedings. Once a written settlement is arrived at during the conciliation proceedings, such a settlement under Section 12(3) has a binding effect not only on the signatories to the settlement but also on all the parties to the industrial dispute which would cover the entire body of the workmen, not only existing workmen but also future workmen, therefore such a settlement during conciliation proceedings has same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an arbitration award. It is axiomatic that if such settlement arrived at during the conciliation proceedings is binding on even future workmen as laid down by Section 18(3)(d), it would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of the unions that are signatories to such settlement under Section 12(3) of the Act as held in the case of **P. Virudhachalam and Ors. vs. Management of Lotus Mills and another**, (1998) 1 SCC 650. It is also well settled that a settlement arrived in the course of conciliation proceedings carries a presumption that it is just and fair and is binding on all the parties to the dispute as well as to the other workmen in the establishment to which the dispute relates and all other person who may be subsequently employed in the establishment and an individual or group of individuals cannot seek to wriggle out of it merely because it does not suit him/them as held in the case of **I.T.C. Ltd. Workers' Welfare Association**, supra.

24. The settlement was admittedly arrived in the year 2001 and the Hon'ble High Court of Bombay in September, 2001 vide order dated 28-9-2001 ordered winding up of the company. The

settlement was signed by the trade union on behalf of the workers including Party I workmen and in terms of annexure to the said settlement, the workmen have received the payments. The settlement has not been challenged and therefore it is binding on all the workmen. It is therefore, the settlement dated 9-4-2001 cannot be assailed by the Party I workmen who have signed the settlement and accepted the dues from the Party II. The above submissions of Ld. Advocate Shri V. A. Palekar and the reliance placed by him on the above citations will have no bearing on the case at hand as they are based on cases where there was factual closure without compliance of mandatory provisions of the Act, unlike the present case. The Party I having failed to prove that the said settlement signed between the management of Auto Accessories Ltd. and Goa Trade and Commercial Workers' Union on 9-4-2001 is illegal and unjustified, the above issue is answered in the negative.

Issue No. 2:

25. Ld. Adv. Ms. Amira Razaq for the Party II has submitted that the entire edifice of case of Party I workmen is based upon their contention that the closure is null and void and have pressed into service the judgment of the Apex Court in the case of **M/s Oswal Agro Furane Ltd. and another vs. Oswal Agro Furane Workers' Union and Others, (2005) 3 SCC 224**. She further submitted that the perusal of the Settlement dated 9-4-2001 reveals that the Party I workmen were the members of a registered trade union which had arrived at the settlement with the management in conciliation proceedings and said Memorandum of settlement is therefore an agreement entered into in conciliation proceedings under Section 12(3) read with Section 18(3) of the Industrial Disputes Act. The names of the Party I workmen viz. Santosh Assoldekar and Manuel Travasso are reflected at Sr. No. 39 and 19 respectively of the annexure to the Memorandum of settlement. The clauses of the settlement show that there was no closure effected by the management of the company at all and the said fact is admitted by the union of which Party I workmen are the members as seen from clauses 1 and 2 of the settlement and therefore, the closure was neither actual nor factual of the company but was an fictional state of things which was agreed to between the parties in order to arrive at an amicable solution to the parties. She further submitted that it is well settled that a deeming fiction whether by agreement or statute brings into existence a fictional state of affairs which

suggest that something is being assumed as true for certain purposes, although in reality it is not so and in support of her contention, she relied upon the case of **Ali MK & Ors. vs. State of Kerala & Ors., (2003) 11 SCC 632**.

26. Per contra, Ld. Adv. Shri V. A. Palekar for the Party I has submitted that the provisions contained in Section 25-N and 25-O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment is bound to apply for prior permission, atleast 90 days before the date on which the intended closure is to take place and they constitute conditions precedent for effecting a valid closure and obtaining a prior permission from the appropriate Government is imperative in character. He further submitted that the entire defence of the Party II revolves around deemed closure, a concept which is alien, in as much as Sections 25 N and 25 O of the Act do not provide for a deeming fiction in favour of the employer. There is no provision in the Act which provides a deeming fiction to assume closure of undertaking and on the contrary, sub-section 7 of Section 25 N and sub-section 6 of Section 25 O provide for a deeming fiction in favour of the workmen and against the employer when it provides that effect of failure to apply for permission or where permission is refused, the closure of the undertaking is deemed to be illegal. The Party II has not complied with the above provisions of the Act and therefore the defence of Party II of invoking deeming fiction to assume a deemed closure is without any substance and is unsustainable and therefore the above issue be answered in the negative.

27. The above materials on record clearly indicate that factually there was no closure of the Party II company at all and what infact took place was an agreement between the registered trade union and the management that there was a deemed closure or a fictitious closure of the Party II company purely for the purpose of arriving at an amicable settlement as per clause 1 of Memorandum of settlement agreed between the union and the Party II and the workmen were deemed as properly relieved in terms of clause 2 of the said Memorandum of settlement and therefore, it cannot be termed as closure and the provisions under Section 25-N and 25-O of the Industrial Disputes Act do not come into play. The said settlement was arrived at under Section 12(3) read with 18(3) of the Industrial Disputes Act before the Conciliation Officer and as such the settlement is

binding on all the parties to the settlement. Moreover, the settlement was not challenged by any of the recognised union or the workmen before the appropriate authority till 2011 by the above two workmen for the first time in the Companies Appeals without explaining the delay. The settlement has thus become final and binding on all the workers. The clauses of the settlement indicate that there was no closure effected by the management of the company at all and the said fact is admitted by the union of which Party I workmen are the members as seen from clauses 1 and 2 of the settlement and therefore, the closure was neither actual nor factual of the company but was an fictional state of things which was agreed to between the parties in order to arrive at an amicable solution to the parties and therefore the provision of Section 25-O or 25-N of Industrial Disputes Act are not at all applicable to the case at hand and therefore, the above submissions of Ld. Advocate Shri Palekar pales into insignificance.

28. Discernibly, there is no date or time mentioned about the closure in the Memorandum of settlement, neither the Party I nor any witnesses deposed on behalf of the workmen were able to specify the date of the closure of the factory or the knowledge of the closure of the factory, thereby clearly establishing that there was no factual closure of the establishment. The Memorandum of settlement has clearly stipulated that the parties including Party I workmen to the settlement have agreed that the factory is deemed to be closed, which means that factually there was no closure but they agreed to arrive at a fictitious state of affairs in order to have an amicable settlement to their dispute and therefore, the reliance placed on the case of **M/s Oswal Agro Furane Ltd. and another**, supra has got no application to the present case as it was based on a case where a factual closure was effected by the company in violation of mandate of Section 25 N, unlike the present case. There is therefore no applicability of the provisions of the Section 25-N and 25-O of the Industrial Disputes Act to the case at hand. There was also no scope of a formal closure of the company as alleged by Party I workmen as the company was in the verge of closure due to the process of law under the provisions of SICA and the Companies Act as referred above. It therefore can be safely said that it was merely a deemed closure and not factual closure of the company effected to arrive at an amicable settlement to the dispute and therefore, the Party II has sufficiently proved the above issue and hence, the issue No. 2 is answered in the affirmative.

Issue No. 3:

29. It is claimed by the Party II that the Party I approached the Tribunal after a lapse of 16 years from the date of settlement and order of winding up and hence, the case is not tenable in law. The Party II has examined Shri Vijay Singh Yadav, Assistant Manager-Law in the office of IFCI Limited. He has stated in para 15 of his affidavit-in-evidence about the delay on the part of Party I approaching the Tribunal. However, there is no evidence on record in support of the claim of Party II that the claim of Party I is bad and non maintainable on account of delay in approaching the appropriate authority and therefore, the above issue is answered in the negative.

Issue No. 4:

30. Needless to mention, the Party I has failed to prove that the settlement dated 9-4-2001 signed between the management and the union with effect from 9-2-2001 is illegal and unjustified and it was a factual closure undertaken by the company under provisions of the Section 25-N and 25-O of the Industrial Disputes Act in order to deprive higher compensation to the workmen thereby compromising their interest and therefore, no relief as claimed by the Party I can be granted. It is therefore, the issue No. 4 is answered accordingly.

31. In the result, I pass the following:

ORDER

- (i) It is hereby held that the Settlement dated 09-04-2001 signed between the management of M/s. National Auto Accessories Limited and Goa Trade and Commercial Workers Union on account of deemed closure of M/s. National Auto Accessories Limited with effect from 09-02-2001, is legal and justified.
- (ii) The Party I/Workmen are therefore not entitled to any reliefs.
- (iii) No order as to costs.
- (iv) Inform the Government accordingly.

Sd/-
(Vincent D'Silva)
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/2/2019-LAB/822

The following award passed by the Labour Court-II, at Panaji-Goa on 13-11-2019 in Case No. Ref. LC-II/IT/09/10 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 11th December, 2019.

IN THE LABOUR COURT-II

GOVERNMENT OF GOA
AT PANAJI

**(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)**

Case No. Ref. LC-II/IT/09/10

Shri Vikas Naik,
Suchebhat,
Kumbharjua-Goa.

... Workman/Party-I

V/s

M/s Garware Goa Nets Ltd.,
Corlim Industrial Estate,
Corlim-Goa.

... Employer/Party-II

Workman/Party-I represented by Adv. Shri A.V. Nigalye.

Employer/Party-II represented by Adv. Shri P. Chawdikar.

Panaji, Dated: 13-11-2019

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by Order dated 25-06-2010, bearing No. 28/26/2010-LAB referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court in turn assigned the present dispute to this Labour Court-II vide his order dated 16-8-2010.

"(1) Whether the action of M/s Garware Goa Nets Limited, Corlim Industrial Estate, Corlim, Goa, in refusing employment to Shri Vikas Naik, Operator, with effect from 16-11-2002, is legal and justified?"

(2) If not, what relief the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. LCII/IT/09/10 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 04-02-2011 at Exb-4. The facts of the case in brief as pleaded by the Workman are that the Employer/Party II (for short, 'Employer') is company incorporated under the Companies Act, 1956 having its registered office and factory at Corlim Industrial Estate, Corlim, Goa. He stated that he was initially appointed as 'Asst. Operator' and subsequently designated as 'Operator'. He stated that he has put in a long and meritorious service of over eight years with the Employer.

3. He stated that by charge-sheet dated 10-07-2002, the Employer alleged false and frivolous charges of misconduct against him. He stated that it was alleged that he deliberately remained absent on the dates mentioned therein. He stated that by the said charge-sheet, he was informed that it has been decided to hold an enquiry against him in respect of the said charges. He stated that it was also alleged that the enquiry will be conducted at Mumbai. He submitted that the Employer decided to hold enquiry against him and appointed an Enquiry Officer, without even seeking explanation from him. He stated that since the registered office of the Employer and its factory is located at Corlim Industrial Estate, Corlim, Goa, the Employer could have conveniently held the enquiry in its factory or office premises or at any other place in Goa. He stated that the Employer has however decided to hold the enquiry in Mumbai. He stated that he had requested the Employer to hold the enquiry in Goa. He stated that however he did not receive any favourable reply from the Employer. He stated that he could not travel to the distant place at Mumbai due to poverty and paucity of funds. He stated that he also could not arrange for assistance in the enquiry. He stated that the Enquiry Officer, who was the appointee of the Employer, conducted the enquiry ex-parte in his absence. He stated that thereafter the Enquiry Officer submitted his findings, holding that the charges alleged in the charge-sheet are proved. He stated that thereafter, by letter dated 08-11-2002, the Employer dismissed him with immediate effect. He submitted that after termination of his service, he raised an industrial dispute with the Employer, demanding reinstatement in service with full back wages. He stated that he also sought intervention of the Labour Commissioner, Government of Goa, which ended in failure.

4. The Workman contended that the action of the Employer in dismissing him from service is not only illegal and unjustified, but also malafide and done with ulterior motive. He submitted that his services have been terminated by the Employer without any reasonable cause and for no misconduct committed by him. He submitted that the charge-sheet dated 10-07-2002 is illegal and the misconduct alleged in the said charge-sheet is false and fictitious. He submitted that the action of the Employer of appointing an Enquiry Officer without even seeking an explanation from him, fixing the date of enquiry and continuing with enquiry without any reply to the charge-sheet from him discloses the malafides of the Employer. He submitted that the said action further shows that the subsequent action of the Employer were premeditated and the Employer had decided to terminate his services, even before holding the enquiry. He submitted that the action of the Employer of holding the enquiry at Mumbai, instead of holding in Goa, where the Employer has its factory as well as its office, is illegal. He submitted that the Employer was well aware that he, due to his poverty, would not be able to travel to Mumbai and participate in the enquiry and it was for this reason that it held the enquiry in Mumbai. He submitted that the further action of the Employer of continuing to hold the enquiry at Mumbai inspite of his request to hold it in Goa, further exhibits the evil desires and the malafide intentions of the Employer. He submitted that by holding the enquiry in Mumbai, the Employer effectively denied the right of defense to him. He submitted that the action of the Employer is in total breach of the principles of natural justice and fair play. He submitted that the Enquiry Officer, who conducted the enquiry against him, was biased in favour of the Employer and against him. He submitted that the findings recorded by the Enquiry Officer, whereby he held that the charges of misconduct alleged against him are proved, are illegal and deserves to be set aside. He submitted that assuming that the enquiry held against him and the findings of the Enquiry Officer are just and legal, in that event the punishment of dismissal awarded to him is extremely harsh and severe and not proportionate to the offence. He therefore submitted that the order of dismissal dated 08-11-2002 is therefore liable to be set aside. The Workman therefore prayed for an Award holding that the action of the Employer in refusing employment to him w.e.f. 16-11-2002 is illegal and unjustified and the Employer be directed to reinstate him in service with continuity of service and with all benefits and privileges attached to his post.

5. The Employer disputed the claim of the Workman by filing its Written Statement on 07-06-2011 at Exhibit-6. The Employer, as and by way of its preliminary objections, submitted that the reference is null and void as there does not exist an "Industrial Dispute" as defined u/s 2(k) of the I.D. Act, 1947 and that the reference has been made by the Government of Goa without any material on record and without application of mind.

The Employer admitted that the Workman was employed with them as 'Operator'. The Employer stated that the attendance record of the Workman is fraught with absenteeism. The Employer stated that the Workman was issued a charge-sheet dated 10-07-2002. The Employer stated that the Workman was informed that they have decided to hold an enquiry against him in respect of the said charges. The Employer stated that it was also informed to the Workman that the enquiry will be conducted at Mumbai. The Employer admitted that the Workman requested them to hold the enquiry in Goa, however denied that he did not receive any favourable reply from them as alleged. The Employer stated that the Workman was informed that it is not obligatory on their part to arrange the enquiry in Goa. The Employer stated that the Workman was informed in the charge-sheet itself issued to him that he will be reimbursed to and fro second class railway fare from Goa to the venue of the enquiry as per his grade, on the scheduled date of enquiry. The Employer stated that the Workman never showed any interest in performing his duties entrusted to him by his superiors and he used to always remain absent from his duties.

6. The Employer stated that an independent Enquiry Officer, Mr. K. Parmeshwaran was appointed to conduct the enquiry with respect to the said charge-sheet. The Employer stated that the Enquiry Officer conducted the enquiry in a fair, proper and impartial manner. The Employer submitted that every opportunity was given to the Workman to defend the charges leveled against him. The Employer submitted that the Workman has however failed to avail the said opportunities. The Employer submitted that the Enquiry Officer conducted the enquiry ex-parte in the absence of the Workman after giving him sufficient opportunities. The Employer stated that the Enquiry Officer submitted his findings dated 18-09-2002 and after appreciating the facts of the case, held the Workman guilty of the charges leveled against him by the Employer.

7. The Employer submitted that they considered the proceedings of the enquiry; the findings of the Enquiry Officer dated 18-09-2002 and concurred with the same. The Employer stated that they considered the past record of the Workman. The Employer stated that they did not find any extenuating circumstances. The Employer stated that considering the gravity of the proved misconduct, they decided to dismiss the Workman from the service. The Employer stated that the Workman was accordingly served with a dismissal letter dated 11-11-2002 dismissing him from service.

8. The Employer admitted that after termination of the services of the Workman, he raised an Industrial dispute with them demanding reinstatement in service with full back wages. The Employer also admitted that the Workman also sought the intervention of the Labour Commissioner, Government of Goa. The Employer admitted that the conciliation officer appointed u/s 4 of the I.D Act, 1947 held conciliation proceedings in the matter. The employer admitted that the said proceedings ended in failure. The Employer submitted that the ground mentioned in para 10 (a) to (k) of the Claim statement are false and cannot be considered under the facts and circumstances of the present matter. The Employer submitted that the punishment of dismissal awarded to the Workman is just and proportionate, considering the proved misconduct and past record of the Workman. The Employer submitted that its action in dismissing the Workman from service is legal, just and proper and therefore the Workman is not entitled to any relief as claimed.

9. The Employer stated that the Workman is gainfully employed from the date of dismissal till date and as such no hardship is caused to the Workman. The Employer submitted that the Workman had accepted his gratuity by duly signing the settlement before the Labour Commissioner. The Employer submitted that the Workman never showed his insistence for his reinstatement during the said proceedings and in fact has willingly accepted the gratuity payment. The Employer submitted that reinstatement is nothing but a mere afterthought with malafide intention, especially since after settlement before the Labour Commissioner, the Workman has accepted gratuity as a full and final settlement of his dues.

10. The Employer submitted that in the event, this Hon'ble Court set aside the enquiry on any of the ground they may be permitted to lead a fresh evidence before this court to prove the charges. The Employer stated that in view of escalating and

continuing losses, they closed the manufacturing operations of their unit located at plot No. 2, Corlim Industrial Estate on 16-06-2012 by informing G.I.D.C., Patto, Panaji-Goa, vide their letter dated 10-07-2012. The Employer stated that in view of closure, they have withdrawn their application for registration with Director of Industries, Trade and Commerce and as such there will be no registration certificate. The Employer stated that vide memorandum of settlement dated 14-06-2012 signed in the office of Commissioner of Labour, retrenched all their sixty-three workmen on their roll. The Employer therefore prayed for dismissal of the present reference issued by the Government of Goa. The Employer denied the overall case of the Party-I as pleaded in his statement of claim and prayed for dismissal of the present reference issued by the Government of Goa.

11. Thereafter, the Workman filed his Re-joinder on 12-07-2011 at Exb.7. The Workman, by way of his Re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in the Written Statement which are contrary to the statements and averments made by him.

12. Based on the pleadings filed by the respective Parties in the present proceedings, this Hon'ble Court framed the following issues on 09-08-2011 at Exhibit-8.

1. Whether a fair and proper enquiry was conducted against the Workman/Party-I?
2. Whether the charges of misconduct leveled against the Workman/Party I vide charge-sheet dated 10-07-2002 are proved to the satisfaction of this Court by acceptable evidence?
3. Whether the Workman/Party I proves that the action of the Employer/Party II in refusing employment to him w.e.f. 16-11-2002 is illegal and unjustified?
4. Whether the Employer/Party II proves that the present order of reference is null and void in view of the preliminary objections raised by them in para (i) and (ii) of their written statement?
5. Whether the Workman/Party I is entitled to any relief?
6. What Order? What Award?

13. My answers to the aforesaid issues are as under:

- (a) Issue No. 1 : In the Negative.
- (b) Issue No. 2 : In the Negative.
- (c) Issue No. 3 : In the Affirmative.
- (d) Issue No. 4 : In the Negative.
- (e) Issue No. 5 & 6 : As per final order.

I have heard the oral arguments of Ld. Adv. Shri A. V. Nigalye, appearing for the Workman as well as Ld. Adv. Shri P. Chawdikar, appearing for the Employer.

14. Ld. Adv. Shri A.V. Nigalye, appearing for the Workman, during the course of his oral arguments, submitted that the Workman was working with the Employer as Asstt. Operator and subsequently, promoted as 'Operator'. He submitted that vide order dated 26-02-2014, passed by this Hon'ble Court in its findings on preliminary issue No. 1 and 2 held that no fair and proper enquiry has been conducted against the workman in respect of the charge-sheet dated 10-07-2002 and therefore the enquiry conducted against the workman is quashed and set aside. He submitted that the Employer led its evidence before this Hon'ble Court by examining its two witnesses, namely, Shri Anant Devlekar and Shri Ashok Patwardhan to prove the charges of misconduct levelled against the workman, vide charge-sheet dated 10-07-2002. He submitted that the oral evidence adduced by the Employer through its aforesaid witnesses is contrary to the documentary evidence on record. He submitted that the witness of the Employer, Shri Ashok Patwardhan indicates that he was not having any authority to depose in the present matter and that as an Accounts Officer of the Employer his duties were related to the accounts of the Employer Company. He submitted that both the said witnesses admitted that the Employer used to make late payment quiet often to the workers in the year 2001 and 2002 and that the said delayed payment used to go for 25 days. He submitted that both the said witnesses admitted that the workers used to face financial difficulties due to delay in making payments to them. He submitted that the second witness of the Employer deposed that he do not know as to who was maintaining the attendance record in the year 2001 and 2002 in the Employer Company and that he is unable to tell as to who was supervising the said person maintaining the attendance record during the said period. He submitted that the second witness of the Employer admitted that the said absence of leave of the workman were condoned by his superiors from time to time. He submitted

that the second witness of the Employer deposed that at present he do not possess any record in writing in support of his statement made in para 7 of his affidavit in evidence, wherein the workman have been shown as absent from November, 2001 till April, 2002 for a total period of 81.5 days. He therefore submitted that the Employer has failed to prove the charges of misconduct as stated in the charge-sheet dated 10-07-2002 issued to him. He submitted that the termination of services of the Workman by the Employer w.e.f. 16-11-2002 is illegal and unjustified. He submitted that without prejudice to his aforesaid contention, the punishment of dismissal from service issued to the Workman is too severe and disproportionate to the proved misconduct. He submitted that after termination of services of the workman, he has been unemployed. He submitted that the workman has made efforts to secure gainful employment, however, he could not succeed. He submitted that the Employer has closed its factory w.e.f. 16-06-2012. He therefore submitted that the Workman is entitled for full back wages.

15. Per contra, Ld. Adv. Shri P. Chawdikar, representing the Employer, during the course of his oral arguments, submitted that by order dated 26-02-2014, passed on the findings on the preliminary issue No. 1 and 2, this Hon'ble Court quashed and set aside the enquiry held against the Workman in respect of charge-sheet dated 10-07-2002 being unfair and improper. He submitted that the Employer therefore led fresh evidence oral as well as documentary by examining its two witnesses, namely, Shri Anant Devlekar and Shri Ashok Patwardhan. He submitted that the oral as well as documentary evidence led by the Employer through its witness Shri Ashok Patwardhan proved the charges of misconduct levelled against the workman vide charge-sheet dated 10-07-2002. He submitted that the said oral as well as documentary evidence on record clearly indicates that the Workman had remained absent unauthorizedly for 81.5 days for the period from November, 2001 till April, 2002 as spelt out in the charge-sheet issued to him. He submitted that the said evidence on record clearly proves the misconduct of habitual absence without leave etc. as spelt out in the charge-sheet. He therefore submitted that the refusal of employment to the Workman is just, fair and legal and the Workman is therefore not entitled to any relief. He submitted that the punishment of dismissal imposed on the workman is proportionate to the proved misconduct. Without prejudice to his aforesaid submission, he submitted that the Employer has

produced on record oral as well as documentary evidence pertaining to the closure of its factory w.e.f. 16-06-2012. He submitted that the Employer also produced on record a memorandum of settlement dated 14-06-2012 signed with its employees union and a compact disc showing the gainful employment of the Workman.

I have carefully perused the entire records of the present case. I have also carefully considered the oral submissions advanced by Ld. Adv. Shri P. Chawdikar appearing for the Employer.

16. *Issue No. 1 and 2:*

Vide order dated 26-02-2014, passed in my finding on the preliminary issue No. 1 and 2, I have come to the conclusion and held that no fair and proper enquiry has been conducted against the Workman in respect of the charge-sheet dated 10-07-2002 and that the enquiry conducted against the Workman is quashed and set aside.

17. *Issue No. 3:*

As the enquiry was quashed and set aside, the Employer chose to lead additional evidence on the floor of this court by examining two witnesses, namely, Shri Anant Devlekar and Shri Ashok Patwardhan to prove the charges of misconduct as spelt out in the charge-sheet dated 10-07-2002, issued to the Workman.

The first witness of the Workman, Shri Anant G. Devlekar, in his affidavit in evidence on record, deposed that he is working with the Employer as Administrative Manager, handling day to day working of administrative department such as salary, leave records, attendance etc. of workmen of the Employer Company. The said witness in para 9 of his affidavit-in-evidence deposed that the Workman remained absent from November, 2001 to April, 2002 for total 81.5 days (being November, 2001–16.5 days, December, 2001–6 days, January, 2002–16 days, February, 2002–11 days, March, 2002–15 days and April, 2002–17 days) and also produced on record copies of extract of muster roll for the period starting from November, 2001 to April, 2002 (Exb. 20-colly). He deposed that in spite of repeated warnings, caution etc., the Workman did not improve in his attendance and deliberately remained absent from work. He deposed that the Workman frequently remained absent unauthorizedly without any satisfactory explanation and without any proper justification. He deposed that due to such acts on behalf of the workman, the Employer had suffered production loss and that despite repeated advices, the

workman did not pay any heed to improve the same and continued with his irresponsible and undisciplined behaviour in the Company.

18. He was cross-examined by Ld. Adv. Shri A. V. Nigalye, appearing for the Workman. In his cross-examination, Shri Devlekar admitted that in his earlier affidavit-in-evidence filed in the present proceedings, he has deposed that he is presently designated as consultant. He deposed that in the present affidavit in evidence, he deposed that he is working with the Employer as Administrative Manager. The witness further deposed that he was Administrative Manager prior to the year 2013. The witness finally admitted that presently, he is not working as Administrative Manager with the Employer Company and that his statement made in para 1 of his affidavit in evidence is incorrect statement. He admitted that in the year 2001, he was not posted in any of the branch of the Employer in Goa and that one Mr. Desai was posted at Goa branch of the Employer as its Manager in the year 2001 and 2002, however, he do not remember his first name. He deposed that he do not remember the name of the person as well as his designation, who was entrusted with the work of maintaining the muster roll in the year 2001 and 2002 by the Employer at its Corlim branch. He deposed that he do not identify the hand-writing appearing on the muster roll at Exb.20-colly. He deposed that apart from the muster roll, the Employer do not have any other records pertaining to the attendance of the Workman. He deposed that he do not recollect as to whether the Employer used to obtain the signature of its workers or maintaining punching card system to mark the attendance of its workers. He admitted that the contents of para 9 of his affidavit in evidence do not match with the muster roll at Exb.20-colly. He deposed that the aforesaid mistake has been made by the clerk appointed by the Employer, however, he do not know his name. He deposed that at the time of preparing the charge-sheet, he had not seen the muster roll maintained by the Employer, wherein the attendance of the Workman has been marked. He deposed that he do not remember as to who had prepared the said charge-sheet against the Workman. He admitted that in his earlier cross-examination in the present matter, he has deposed that sometimes the Workman used to remain absent on medical grounds and subsequently, he used to submit the medical certificate. He admitted that there was delay in payment of wages to the workers of the Employer at the relevant time i.e. from November, 2001 to April, 2002. He deposed that the Workman used to travel from his native place at Kumbharjua

to the factory of the Employer to report for his duties, which is around 10 kms. away from the factory of the Employer. He deposed that he do not know as to whether due to delay in payment of wages of the Workman, he used to find difficult to travel by bus from his place of residence to the factory of the Employer. He admitted that because of delay in payment of wages of the workers, there was consequential delay in payment of ESI contribution of the workers. He deposed that he do not know as to whether because of unavailability of ESI facility, the Workman was compelled to approach the private doctor for medical treatment of himself as well as of his family members at the relevant time. He deposed that delay in payment of wages affected the attendance of the Workman. He deposed that he is not aware as to whether whenever the Workman used to remain absent, he used to intimate to the management of the Employer about his absenteeism either by telephonically or otherwise. He deposed that he do not know as to whether the Workman used to remain absent hardly for one or two days in a month and that contents of para 9 of his affidavit in evidence is false.

Thus, the aforesaid oral as well as documentary evidence led by the Employer through its witness Shri Anant Devlekar is full of contradictions. The testimony of the said first witness of the Employer Shri Devlekar has been shaken and as such could not be believed.

19. The second witness of the Employer, namely, Shri Ashok Patwardhan filed his affidavit in evidence and also produced on record certain documents. The said affidavit in evidence of the Employer's witness, Shri Ashok Patwardhan namely two compact discs (Exb.38-colly), copy of letter of the Employer dated 10-07-2012 (Exb. 39) and copy of memorandum of settlement dated 14-06-2012 (Exb. 40). The contents of affidavit-in-evidence of both the witnesses of the Employer are more or less same. More so ever, Shri Patwardhan, in para 6 of his affidavit in evidence deposed 81.5 days of unauthorized absence of the Workman, similar to the deposition of para 9 of the first witness of the Employer Shri Devlekar. The said para 6 of affidavit in evidence of the said witness of the Employer do not match with the copies of extract of muster roll on record at Exb. 20-colly and as such differs from each other. Hence, I am not inclined to give any weightage to the said oral evidence of Shri Ashok Patwardhan.

20. On the contrary, the evidence on record indicates that the Workman was in the employment of the Employer for over 12 years till he was

dismissed from service w.e.f. 16-11-2002. The Workman was initially appointed as Asstt. Operator and subsequently promoted as Operator. The Employer also failed to produce on record any memo, show-cause notices, warning letters, charge-sheets etc. issued to the Workman in the past in his long term service with them. The second witness of the Employer Shri Patwardhan admitted that at the relevant time, there was delay in payment of wages to the workers. The said witness of the Employer also admitted that the Workman used to remain absent on medical ground and subsequently, he used to submit the medical certificate. In view of above, it is held that the Employer also failed to prove any of the charges of misconduct as spelt out in the charge-sheet dated 10-07-2002, issued to the Workman, either by holding a fair and proper enquiry in accordance with principles of natural justice or also on the floor of this court. In the absence of any proved misconduct on the part of the Workman, it is held that the action of the Employer in refusing employment to the Workman w.e.f. 16-11-2002 is illegal and unjustified. The issue No. 3 is therefore answered in the affirmative.

21. Issue No. 4:

The Employer, as and by way of its preliminary objections, filed in the written statement, submitted that the reference is null and void as there is no industrial dispute exists as defined u/s 2 (k) of the I.D. Act, 1947 and that the reference has been made by the Government of Goa, without any material on record, in haste and without application of mind. The burden to prove the aforesaid issue is therefore on the Employer. The Employer has however, failed to bring on record any material evidence in support of the aforesaid issue. Even otherwise, in the case in hand, it is not in dispute that the Party I is a 'workman' within the meaning of Section 2(s) of the I.D. Act, 1947. It is also not in dispute that the Party II Company is an 'Employer' within the meaning of Section 2(j) of the I.D. Act, 1947. Hence, the present dispute raised by the workman against the Employer pertaining to his non-employment is an 'industrial dispute' within the meaning of Section 2(k) of the I.D. Act, 1947 and as such this court has every jurisdiction to adjudicate the present reference. Consequently, the Employer failed to prove its allegations that the reference is bad-in-law for any reasons as there is no industrial dispute exists as defined u/s 2 (k) of the I.D. Act, 1947 and that the reference has been made by the Government of Goa without any material on record, in haste and without application of mind. The issue No. 4 is therefore answered in the negative.

22. Issue No. 5:

While deciding the issue No. 3 hereinabove, I have discussed and come to the conclusion that the action of the Employer in refusing employment to the Workman w.e.f. 16-11-2002 is illegal and unjustified. The evidence on record indicates that the Workman was initially appointed as Asstt. Operator and subsequently promoted as Operator. The evidence on record indicates that the Employer has permanently closed its Corlim unit w.e.f. 16-06-2012 due to unavoidable and unforeseen circumstances and withdrawn its application for registration with the Director of Industries, Trade and Commerce, vide its letter dated 10-07-2012 (Exb.39). The Workman is therefore not entitled for any reinstatement in the service of the Employer.

23. In the case of **Deepali Gundu Surwase v/s. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) and Ors., reported in (2013) 10 SCC 324**, the Hon'ble Apex Court has held that if the order of termination is void ab initio, the Workman is entitled to full back wages. The relevant para of the decision is extracted hereunder:

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his

entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

24. The principle laid down by the Hon'ble Apex Court is well recognized and is also applicable to the case in hand. In the case in hand, the Workman was in the employment of the Employer for over 12 years till he was illegally dismissed from service w.e.f. 16-11-2002. The Workman pleaded and also stated on oath that he is unemployed from the date of his termination till date and that he has made efforts to secure gainful employment. However, he has not been successful because he was dismissed employee.

25. In his cross-examination, the Workman deposed that he has not made any efforts for employment from the date of his termination till date. He deposed that he is a married person having one minor daughter of five years old. He deposed that he along with his family earned an amount of Rs. 2000/- to Rs. 3000/- by working in their fields. He deposed that he has studied up to seventh standard and that he do not know to read English. He admitted that his statement made in para 13 of his affidavit in evidence that he has made efforts to secure a gainful employment is false.

26. Two compact discs have been produced by the Employer on record at Exb.38-colly, are copies and not original. The said compact discs produced by the Employer at Exb.38-colly are not supported by a certificate of a responsible officer. The said CDs have been prepared by M/s. Cobra Detective Service, however, the second witness of the Employer stated that he do not know exactly as to who was the author of the said CD at Exb.38-colly. He admitted that he do not know whether any permission was obtained from the concerned person/authority. There is no corroborative evidence to support the compact disc. Hence, I am not inclined to accept the evidence recorded in CD at Exb.38-colly. Taking into consideration the relevant factors, a lump sum amount of Rs. 2,75,000/- (Rupees Two lakhs seventy five thousand only) be awarded to the workman in order to meet the ends of justice.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of M/s Garware Goa Nets Limited, Corlim Industrial Estate, Corlim, Goa in refusing employment to Shri Vikas Naik, Operator with effect from 16-11-2002, is illegal and unjustified.
2. The Employer, M/s. Garware Goa Nets Limited, Corlim Industrial Estate, Corlim, Goa is hereby directed to pay to the Workman, Shri Vikas Naik a sum of Rs. 2,75,000/- (Rupees Two lakhs seventy five thousand only) within a period of two months from the date of passing the present order.
3. No order as to costs.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar)
Presiding Officer,
Labour Court-II.

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Department of Personnel

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Order

No. 22/10/2018-PER

The Governor of Goa is pleased to allot the charge of Director General of Police to Shri Jaspal Singh, IPS IGP, Goa, in addition to his own duties, with immediate effect, until further orders, in public interest.

By order and in the name of the Governor of Goa.

Maya Pednekar, Under Secretary (Personnel-II).

Porvorim, 13th December, 2019.

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Department of Planning

Directorate of Planning, Statistics & Evaluation

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Notification

No. DPSE/IV/population Census-2021/2019-20/2055

The following Corrigendum No. DPSE/IV/population Census-2021/2019-20/2053 dated 11-12-2019 is hereby published for general information.

Dr. Y. Durga Prasad, Director (Planning).

Porvorim, 16th December, 2019.

Corrigendum

No. DPSE/IV/Population Census-2021/2019-20/2053

1) Read Notification No. DPSE/IV/Population Census-2021/2019-20/1928 dated 20th November, 2019.

- a) In the above Notification at Sr. No. 1 may be read as "Additional Collector-I, North Goa District" instead of "Additional Collector, North Goa District."
- b) Sr. No. 2 may be read as "Additional Collector-I, South Goa District" instead of "Additional Collector, South Goa District."
- c) Sr. No. 3 may be read as "Deputy Collector-cum-SDM Bardez, Bicholim, Ponda, Pernem, Dharbandora, Canacona, Satari, Sanguem & Quepem Sub-Divisions" instead of "Deputy Collector Bardez, Bicholim, Ponda, Pernem, Dharbandora, Canacona, Satari, Sanguem & Quepem Sub-Divisions".

2) Read Notification No. DPSE/IV/Population Census-2021/2019-20/1927 dated 20th November, 2019.

- a) In the above Notification at Sr. No. 3 may be read as "Deputy Collector-cum-SDM Panaji Sub-Division" instead of "Deputy Collector, Panaji Sub-Division".
- b) Sr. No. 4 may be read as "Deputy Collector-cum-SDM Margao Sub-Division" instead of "Deputy Collector, Margao Sub-Division".
- c) Sr. No. 5 may be read as "Deputy Collector-cum-SDM Mormugao Sub-Division" instead of "Deputy Collector, Mormugao Sub-Division".

By order and in the name of the Governor of Goa.

Dr. Y. Durga Prasad, Director & ex officio Joint Secretary (Planning).

Porvorim, 11th December, 2019.

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Department of Tribal Welfare

Directorate of Tribal Welfare

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Notification

DTW/STAT/EMRSs/2016-17/5220

Government is pleased to constitute the Committee for tender evaluation for the construction of Eklavya Model Residential School to examine the presentation done by the bidders

and decide whether the successful bidder whose bid is eligible for being entrusted with the work of construction of the Eklavya Model Residential School (EMRS). The Committee shall also evaluate if the bidders have planned the project as per the norms of Education Department, appropriate allocation of space for playground for sports complex, etc. Further to examine if the project is designed in accordance with norms specified in the rules of Town and Country Planning Act.

The Committee for tender evaluation for the construction of Eklavya Model Residential School consists of the following members:

- | | |
|---|---------------------|
| 1. Hon'ble Minister for Tribal Welfare | — Chairman. |
| 2. Secretary, Tribal Welfare | — Member. |
| 3. Additional Secretary (Finance) | — Member. |
| 4. Director of Panchayat | — Member. |
| 5. Chief Town Planner | — Member. |
| 6. Director of Education | — Member. |
| 7. Director of Sports and Youth Affairs | — Member. |
| 8. Principal Chief Engineer (PWD) | — Member. |
| 9. Director of Tribal Welfare | — Member Secretary. |

The functions of the Committee for tender evaluation for the construction of Eklavya Model Residential School are as under:

1. The Committee shall evaluate the tender in terms of quality of work already executed by the agencies.
2. The Committee shall verify the nature of work executed by the agencies as per the norms and standards specified in the rule of law.
3. The Committee shall verify the financial as well as physical credibility to complete the project in time if entrusted.
4. The Committee shall verify the tentative plan of execution of the project if entrusted.
5. Any other function related to the project "Eklavya Model Residential School at Arla Keri" entrusted by the Chairman of the Committee.

The notification is issued with the approval of the Government.

By order and in the name of the Governor of Goa.

Sandhya Kamat, Director & ex officio Joint Secretary (Tribal Welfare).

Panaji, 16th December, 2019.

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